IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12785 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GAUTAM RATILAL JOSHI THROUGH HIS WIFE SHEILABEN

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 12785 of 2004

MR AM PAREKH for Petitioner No. 1

MS HANSA B PUNANI AGP Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 14/02/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the detenu through his wife challenging his detention in pursuance

of the order passed against him by Police Commissioner, Rajkot City, on 23rd of August, 2004, in exercise of powers conferred upon him under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as dangerous person from 26th of August, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration two types of material to arrive at the subjective satisfaction. Firstly, the detaining authority took into consideration three criminal cases registered against the petitioner under the Indian Penal Code for theft of two wheeler vehicles. Secondly, the detaining authority took into consideration two in-camera statements of witnesses, as recorded by the sponsoring authority on 20th of August, 2004 and verified by the detaining authority on 21st of August, 2004. The identity of the witnesses were not disclosed by the detaining authority, claiming privilege under Section 9(2) of the PASA Act.

3. Three criminal cases came to be registered against the petitioner for the offence punishable under Section 379 of the Indian Penal Code for theft of two wheeler vehicles. The first case came to be registered before the Rajkot Taluka Police Station on 23rd of April, 2002, second case on 11th of September, 2002 before Bhaktinagar Police Station and third case before the 'A' Division Police Station, Rajkot, on 14th of August, 2004. The detaining authority considered exhaustively and thoroughly the investigation papers in all the three cases registered against the petitioner and came to the conclusion that the petitioner was engaged in activities of stealing two wheeler vehicles and, therefore, he was a dangerous person within the meaning of the PASA Act.

4. The detaining authority also took into consideration two in-camera statements of the witnesses. The first witness referred to an incident occurred on 20th of May, 2004. The witness was present at his place of business i.e. auto repairing garage, at about 5.00 p.m. the petitioner and his accomplice Vallabhbhai Chhaganbhai Patel brought one Hero Honda motorcycle to the witness and the motorcycle was without any registration number. The witness was told to keep the said motorcycle in his garage and to repair it and service the same. The witness was also told by the petitioner and his accomplice that the said motorcycle was to be kept by the witness till the same was sold.

The witness knew that the petitioner was engaged in activities of stealing vehicles and, therefore, he refused to keep the said motorcycle. On refusal of the witness, the petitioner and his accomplice started abusing the witness. The witness said that the petitioner and his accomplice were harassing the innocent person like him, and he would go to the police and get the petitioner arrested. On saying so by the witness, the petitioner and his accomplice were excited and started beating the witness, and the petitioner took out a knife and gave threat to the witness that if any attempt is made by the witness to get him arrested, he would be done to death. The witness was frightened and started shouting. So, a crowd was gathered. None from the crowd dared to rescue the witness on account of fear of the petitioner. On the contrary, the petitioner and his accomplice to create terror, rushed towards the crowd with open knife abusing the persons. The people ran helter - skleter and atmosphere of terror was spread. Thereafter, the witness on account of fear, by act of supplication, could save him. The second witness referred to an incident occurred on 11th of July, 2004. The witness was present at the place of his business at about 10.00 a.m., the petitioner and his accomplice Vallabhbhai Chhaganbhai Patel approached the witness with one Hero Honda Motorcycle. The witness was told that the petitioner and his accomplice wanted to sell the said motorcycle and offered witness himself to purchase it or witness should sell the same to someone else after deducting commission. The witness knew that the petitioner was engaged in the activities of theft of vehicles and, therefore, the witness refused to comply with the proposal of the petitioner. Thereupon, the petitioner and his accomplice started abusing the witness and started beating him. On account of shouts of help of the petitioner, a crowd was gathered, but none dared to rescue the witness on account of fear of the petitioner. The witness stated that the petitioner was harassing innocent person like him and he would go to the Police station and give complaint against the petitioner. Thereupon, the accomplice of the petitioner Vallabhbhai Patel took out a knife and threatened the witness that if he dared to file complaint against them, he would be done to death. The witness was frightened and to create terror amongst the crowd, the petitioner and his accomplice rushed towards the crowd with open knife. So, people started running helter - skelter. Ultimately, on account of fear, by act of supplication of the witness, he could save himself from further harassment.

5. From the above material, the detaining authority

came to the conclusion that the petitioner was head-strong person and of ferocious tendencies. The detaining authority came to the conclusion that the petitioner was engaged in anti-social and illegal activities of committing thefts of two wheeler vehicles. The detaining authority also came to the conclusion that after forming gang, the petitioner, to execute his illegal activities, was in habit of harassing innocent citizens. The detaining authority came to the conclusion that the activities of the petitioner were disturbing the public order and were required to be prevented forthwith. The detaining authority, after considering other remedial measures available against the petitioner under general law, came to the conclusion that there was no other alternative except to detain the petitioner as dangerous person under the PASA Act. The detaining authority, therefore, passed the order of detention against the petitioner, which is under challenge in this petition.

6. Learned Advocate Mr.A.M.Parekh for the petitioner and learned AGP Ms.Hansa B Punani for the respondents were heard at length.

7. Out of various grounds urged on behalf of the petitioner to challenge the order of detention and as opposed and controverted by learned AGP, it appears that this petition can be examined and disposed of on the sole issue that whether there was credible and cogent material placed before the detaining authority to come to the conclusion that by the activities of the petitioner, the public order was disturbed.

8. To arrive at the subjective satisfaction that the dangerous activities of the petitioner were prejudicial to the maintenance of public order, the detaining authority must rely upon credible and cogent material indicating that the activities of the detenu directly or indirectly were causing or were likely to cause harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or the public health. While undertaking this exercise, the detaining authority has to draw a clear line between the cases falling within the category of breach of law and order and the cases falling within the category of breach of public order. Referring to the three criminal cases filed against the petitioner for the offences punishable under Section 379 of the Indian Penal Code, on account of the allegation of theft of vehicles by the petitioner, and going through the investigation papers as placed on record, it is found that those three criminal cases came to be filed against

the detenu because it was alleged that the detenu was involved in committing theft of two wheeler vehicles. The role ascribed to the detenu in investigation reveals an offence punishable under Section 379 of the Indian Penal Code. However, merely filing or registration of criminal cases would not result in a conclusion that the activities of the petitioner were disturbing the public order. During the investigation, the petitioner was found to have committed the offence in breach of penal statute of the country. The cases came to be filed on that account, and for such violation of penal statute, the petitioner may be tried according to law and may be punished, if found guilty. The cases are still pending. But as aforesaid, the act constituting the offence cannot be said to have affected the even tempo of the life of the community nor the activities revealed through the investigating papers indicate that the activities alleged through these cases, affected the society at large or section thereof or even the tempo of life of the community was disturbed. Therefore, these cases may be instances of breach of law and order, but cannot be branded as activities disturbing the public order.

9. While referring to the in-camera statements, as recorded by the sponsoring authority and verified by the detaining authority, it must be borne in mind that while reaching to the subjective satisfaction about the alleged activities of the petitioner, it would be necessary for the detaining authority to consider fall out, reach and impact of the activities of the petitioner and thereafter to come to the conclusion that such activities were capable of disturbing the public order. Two incidents, as narrated through in-camera statements, reveal individual disputes than to involve society at large or even disturbing the even tempo of the life of the community. The potentiality of the acts alleged through in-camera statements, even from the bare reading of them, are not capable of disturbing the even tempo of life of the community or society at large or section of the society. No widespread danger or harm to the society could be inferred from the statements of the witnesses. Therefore, even after taking them on their face value, those incidents, may be instances of disturbing law and order, which can be taken care of by general law and by no stretch of reasoning, such activities can be branded to be disturbing the public order.

10. In the matter of ASHOKBHAI JIVRAJ @ JIVABHAI SOLANKI vs. POLICE COMMISSIONER, SURAT and Ors. as reported in 2000 (1) GLH 393. The Division Bench of this Court after considering many decisions of the Apex Court,

observed in paras 20 and 21 as under :

"20 The Division Bench then considered the law laid down by the Apex Court in Piyush Kantilal v. Commissioner of Police, Ahmedabad City, AIR 1989 SC 491 and Two. Devaki vs. State of Tamil Nadu, AIR 1990 SC 1086. In Piyush Kantilal, similar circumstances were before the detaining authority and it was alleged that detention of the detenu was necessary in order to prevent activities of the detenu in maintenance of public order. Similarly in Two. Devaki, panic amongst people in the hall in which the incident took place and in nearby vicinity was highlighted. It was also alleged that people were scared and had run helter-skelter. In spite of such allegations, the Supreme Court held that they were not cases of maintenance of public order and hence, no action of preventive detention was uncalled for.

21. The Division Bench, following the above cases, observed that in the opinion of the Supreme Court, the selective phrases in the statements would not take out the case from maintenance of law and order to that of maintenance of public order and as power of detention, could not be used for maintenance of law and order, but only for public order, the order of detention made in such circumstances could not be upheld.

Again in Mustakmiya Jabbarmiya Shaikh vs. M.M. Mehta, Commissioner of Police and Others, 1995 (2) GLR 1268 (Sc), the Supreme Court considered the relevant decisions on point including the decisions in Arun Ghosh v. State of West Bengal, 1979 (1) SCC 98 and held that stray incidents would not affect "public order" and order of detention cannot be passed in such cases."

11. The present set of facts are squarely covered by the above decision of this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki (supra) and therefore the subjective satisfaction arrived at by the detaining authority in respect of disturbance of public order by the alleged activities of the detenu cannot be said to be legal, valid and in accordance with law. The order under challenge, therefore, is required to be quashed and set aside on this ground alone.

12. In the result, the petition is allowed. The order passed by Commissioner of Police, Rajkot City, on 23rd of August, 2004, against the detenu in exercise of powers under Section 3(2) of the PASA Act is hereby quashed and set aside. The detenu - Gautam Ratilal Joshi is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

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